

(iii) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of the guaranty with respect to an incident or with respect to a release or threatened release.

(iv) A defense relating to the amount of a claim or claims that exceeds the amount of the guaranty, which amount is based on the gross tonnage of the vessel as entered on the vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except when the guarantor knew or should have known that the applicable tonnage certificate was incorrect.

(v) The claim is not one made under either of the Acts.

(2) *Limitation on guarantor liability.* A guarantor that participates in any evidence of financial responsibility under this part shall be liable because of that participation, with respect to an incident or a release or threatened release, in any proceeding only for the amount and type of costs and damages specified in the evidence of financial responsibility. A guarantor shall not be considered to have consented to direct action under any law other than the Acts, or to unlimited liability under any law or in any venue, solely because of the guarantor's participation in providing any evidence of financial responsibility under this part. In the event of any finding that liability of a guarantor exceeds the amount of the guaranty provided under this part, that guaranty is considered null and void with respect to that excess.

(e) *Public access to data.* Financial data filed by an applicant, certificant, and any other person is considered public information to the extent required by the Freedom of Information Act (5 U.S.C. 552) and permitted by the Privacy Act (5 U.S.C. 552a).

(f) *Total applicable amount.* (1) The applicable amount under OPA 90 is determined as follows:

(i) For a tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section

2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55)).

(A) Over 300 gross tons (and a vessel of 300 gross tons or less using the waters of the United States Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States, as specified in §138.12(a)(1)) but not exceeding 3,000 gross tons, the greater of \$2,000,000 or \$1,200 per gross ton; and

(B) Over 3,000 gross tons, the greater of \$10,000,000 or \$1,200 per gross ton.

(ii) For a vessel other than a tank vessel under paragraph (f)(1)(i) of this section that is over 300 gross tons or that is 300 gross tons or less using the waters of the Exclusive Economic Zone of the United States to transship or lighter oil destined for a place subject to the jurisdiction of the United States, the greater of \$500,000 or \$600 per gross ton.

(2) The applicable amount under CERCLA is determined as follows:

(i) For a vessel over 300 gross tons carrying a hazardous substance as cargo, the greater of \$5,000,000 or \$300 per gross ton.

(ii) For any other vessel over 300 gross tons, the greater of \$500,000 or \$300 per gross ton.

(3) The total applicable amount is the maximum applicable amount calculated under paragraph (f)(1) of this section plus maximum applicable amount calculated under paragraph (f)(2) of this section.

[CGD 91-005, 59 FR 34227, July 1, 1994, as amended by CGD 91-005, 61 FR 9274, Mar. 7, 1996]

#### §138.90 Individual and Fleet Certificates.

(a) The Director, NPFC, issues an individual Certificate for each vessel listed on a completed application when the Director, NPFC, determines that acceptable evidence of financial responsibility has been provided and appropriate fees have been paid, except where a Fleet Certificate is issued under this section or where a Master Certificate is issued under §138.110. Each Certificate of any type issued under this part is issued only in the name of a vessel operator and is effective for not more than three years from the date of issue, as indicated on each

Certificate. An authorized official of the applicant may submit to the Director, NPFC, a letter requesting that additional vessels be added to a previously submitted application for an individual Certificate. The letter must set forth all information required in item 5 of the application form. The authorized official shall also submit or cause to be submitted acceptable evidence of financial responsibility, if required, and certification fees for these additional vessels. The certificant shall carry the original individual Certificate on the vessel named on the Certificate, except that a legible copy (certified as accurate by a notary public or other person authorized to take oaths in the United States) may be carried instead of the original if the vessel is an unmanned barge and does not have a document carrying device which the vessel operator believes would offer suitable protection for the original Certificate. If a notarized copy of an individual Certificate is carried aboard a barge, the Certificate shall retain the original in the United States and shall make it readily available for inspection by United States Government officials.

(b) An operator of two or more barges that are not tank vessels and that from time to time may be subject to this part (e.g., a hopper barge over 300 gross tons when carrying oily metal shavings or similar cargo), so long as the operator of such a fleet is a self-insurer or arranges with an acceptable guarantor to cover, automatically, all such barges for which the operator may from time to time be responsible, may apply to the Director, NPFC, for issuance of a Fleet Certificate. A legible copy of the Fleet Certificate, certified as accurate by a notary public or other person authorized to take oaths in the United States, must be carried on each barge when subject to this part. In addition, the certificant shall retain in the United States the original Fleet Certificate and shall make it readily available for inspection by United States Government officials. The original Fleet Certificate, when invalid, must be completed on the reverse side and returned immediately to the Director, NPFC, and all copies must be destroyed. When the certificant ceases to

be responsible for a barge covered by a Fleet Certificate, the certificant shall immediately destroy the copy of the Fleet Certificate carried aboard that barge.

(c) A person shall not make any alteration on any Certificate issued under this part or copy of that Certificate, except the notarized certifications permitted in §138.110(f) and paragraphs (a) and (b) of this section. A Certificate or copy containing any alteration is void.

(d) If, at any time after a Certificate has been issued, a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant shall notify the Director, NPFC, in writing within 10 days of becoming aware of the change. A vessel or operator name change or change of a guarantor shall be reported as soon as possible by telefax or other electronic means to the Director, NPFC, and followed by a written notice sent within three business days.

(e) Except as provided in §138.90(f), at the moment a certificant ceases to be the operator of a vessel for any reason, including a vessel that is scrapped or transferred to a new operator, the individual Certificate naming the vessel, and any copies of the Certificate, are void and their further use is prohibited. In that case, the certificant shall, within 10 days of the Certificate becoming void, complete the reverse side of the original individual Certificate naming the involved vessel and return the Certificate to the Director, NPFC. If the Certificate cannot be returned because it has been lost or destroyed, the certificant shall, within three business days, submit the following information in writing to the Director, NPFC:

(1) The number of the individual Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred.

(f) In the event of the temporary transfer of custody of an unmanned barge certificated under this part, where the certificant transferring the barge continues to be liable under the Acts and continues to maintain on file with the Director, NPFC, acceptable evidence of financial responsibility with respect to the barge, the existing individual Certificate remains in effect. A temporary new individual Certificate is not required. A transferee is encouraged to require the transferring certificant to acknowledge in writing that the transferring certificant agrees to remain responsible for pollution liabilities.

**§ 138.100 Non-owning operator's responsibility for identification.**

(a) Each operator that is not an owner of a vessel certificated under this part, other than an unmanned barge, shall ensure that the original or a legible copy of the demise charter-party (or other written document on the owner's letterhead, signed by the vessel owner, which specifically identifies the vessel operator named on the Certificate) is maintained on board the vessel.

(b) The demise charter-party or other document required by paragraph (a) of this section must be presented, upon request, for examination to a United States Government official.

**§ 138.110 Master Certificates.**

(a) A contractor or other person who is responsible for a vessel in the capacity of a builder, scrapper, lessor, or seller (including a repairer who agrees to be responsible for a vessel under its custody) may apply for a Master Certificate instead of applying for an individual Certificate for each vessel. A Master Certificate covers all of the vessels subject to this part held by the applicant solely for purposes of construction, repair, scrapping, lease, or sale. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, leasing, or selling (e.g., a slop barge used by a shipyard) cannot be covered by a Master Certificate. Any vessel for which a Certificate is required, but which is not eligible for a Master Certificate, must be covered by

either an individual Certificate or a Fleet Certificate.

(b) An applicant for a Master Certificate shall submit an application form in the manner prescribed by § 138.60. An applicant shall establish evidence of financial responsibility in accordance with § 138.80, by submission, for example, of an acceptable Master Insurance Guaranty Form, Surety Bond Guaranty Form, Master Financial Guaranty Form, or acceptable self-insurance documentation. An application must be completed in full, except for Item 5. The applicant shall make the following statement in Item 5: "This is an application for a Master Certificate. The largest tank vessel to be covered by this application is [insert applicable gross tons] gross tons. The largest vessel other than a tank vessel is [insert applicable gross tons] gross tons." The dollar amount of financial responsibility evidenced by the applicant must be sufficient to meet the amount required under this part.

(c) Each Master Certificate issued by the Director, NPFC, indicates—

(1) The name of the applicant (i.e., the builder, repairer, scrapper, lessor, or seller);

(2) The date of issuance and termination, encompassing a period of not more than three years; and

(3) The gross tons of the largest tank vessel and gross tons of the largest vessel other than a tank vessel eligible for coverage by that Master Certificate. The Master Certificate does not identify the name of each vessel covered by the Certificate.

(d) Each additional vessel which does not exceed the respective tonnages indicated on the Master Certificate and which is eligible for coverage by a Master Certificate is automatically covered by that Master Certificate. Before acquiring a vessel, by any means, including conversion of an existing vessel, that would have the effect of increasing the certificant's required amount of financial responsibility (above that provided for issuance of the existing Master Certificate), the certificant shall submit to the Director, NPFC, the following:

(1) Evidence of increased financial responsibility.

(2) A new certification fee.